

Legislative Audit Division

Professional & Occupational Licensing

Business Standards Division
Department of Labor and Industry

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Introduction Montana regulates the practice of various professions and occupations through licensing boards. Licensing boards consist of members of the profession or occupation and members of the public appointed by the Governor. The primary purpose of professional licensing is to ensure public health, safety and welfare is protected from unskilled, incompetent or unethical practitioners. There are currently 32 professional licensing boards administratively attached to the Department of Labor and Industry.

House Joint Resolution 20 During the 2003 session, the Montana Legislature passed House Joint Resolution (HJR) 20, requesting the Legislative Audit Committee prioritize a series of limited scope performance audits of the licensing boards administratively attached to the department. HJR 20 requested we address five aspects of professional and occupational licensing; board composition, department administrative services, licensing fees, public protection, and disciplinary activities.

Board Composition HJR 20 requested we examine board composition to ensure both the public and professions are adequately represented. We reviewed various aspects of board organization, including membership requirements, length of board member terms, board meetings, and the ratio of public to professional board members. Boards consist of between three to eleven members. Board members serve terms of between three and five years. Members either meet as a full board, or in smaller groups. In FY 2003, around 250 meetings were held.

Ratio of Public to Professional Members Compared to Other States All licensing boards in Montana contain a majority of members representing the interests of the regulated profession. Nearly all boards are also required under statute to include a member or members appointed to represent the interests of the public. To determine if public and professional interests are adequately represented on boards, we compared the ratio of public to professional members on licensing boards with other boards in Montana and other states. This comparison showed licensing boards have more public members on average than regulatory boards in Montana and in other states.

Department Organizational Structure HJR 20 requested we determine if the department administers board activities in compliance with law and rule, provides boards timely and effective services, and uses resources efficiently. The department provides administrative support to boards through the Business Standards Division.

Changes to Improve Department Organizational Structure Following the 2001 legislative session, board administrative responsibilities were transferred from the

Department of Commerce to the Department of Labor and Industry. Following the transfer, the Department of Labor and Industry conducted an internal review of the organizational structures of the two licensing bureaus to identify strengths and weaknesses. Based on this review, the department developed management reorganization plans for both bureaus to strengthen management controls and deliver improvements in administrative services provided to boards, licensees and the public.

Additional Guidance for Management Reorganization Needed Continuing efforts by the department to identify and remedy weaknesses in administrative procedures should lead to further improvements in the delivery of services to boards and licensees. The department can maximize the benefits derived from management reorganization by revising policies and procedures, improving management information reporting, and establishing performance measurement parameters.

Licensing Fees and Board Finances Professional licensing is funded entirely through state special revenue provided by fees paid by licensees. Licensing fees fund all board activities and the department's administrative services. Over the past two fiscal years, licensing fees generated approximately \$5.35 million in average annual revenues. HJR 20 requested we examine licensing fees to ensure they are commensurate with the costs of regulation. HJR 20 also requested we review board fund balances to ensure they are sufficient for board operations.

Assigning the Department Responsibility for Administrative Fees Review of fee revenues, licensee opinions, and fees in other states showed the procedures for setting fee types and amounts for first-time applicants and renewals ensure fees are commensurate with costs. However, fees for administrative services are not commensurate with costs. There are significant variations in administrative service fees charged by different boards. As the administrative entity, the department is the service provider and the most suitable location for decisions relating to administrative service fees. By assigning the department authority for setting administrative service fees, a single uniform administrative fee schedule can be developed.

Improvements Needed in Responding to Excess Balances Section 17-2-302, MCA, limits the fund cash balance to twice the board's annual appropriation authority. Responding to an excess balance should involve returning money to licensees through temporary fee adjustments. The response should also be as timely and efficient as possible. Review of the seven boards with excess balances showed responses were not meeting these requirements. To improve boards' ability to respond to excess cash balances, the department should be given statutory authority to make temporary fee adjustments. Boards should delegate authority over temporary fee adjustments to the department in cases where cash balances exceed limitations defined in statute. Boards would need to establish the framework needed to adjust fees and reduce fund balances.

Department Administrative Support Costs Statute authorizes the department to assess administrative costs against board funds on an equitable basis and requires boards pay their share of these costs. The department recently made changes in the methodology for calculating administrative support costs. These changes have resulted in some boards paying more and others paying less. However, the new procedures have eliminated the problem of cross-subsidization between boards and also ensure administrative support costs are allocated equitably.

License Application All licensees are required to go through the application process. Although requirements vary according to different professional standards, applicants generally have to meet minimum educational and professional experience requirements. HJR 20 requested we examine board education and experience requirements to ensure they protect the public rather than limit access to a profession.

Licensure Requirements Protect the Public Review of the licensure process showed boards are using licensure requirements to protect the public, rather than limit access. Licensure requirements enjoy wide support among board members and licensees and are comparable with requirements in other states. As the department standardized administration of the licensure process, procedures for individual boards have tended to gravitate towards common standards.

The department receives an average of 7,000 new license applications annually. We analyzed data for approximately 11,700 license applications received by the department during FY 2002 and FY 2003. Data shows 88 percent of applications were approved and less than 1 percent of applications were denied over the two-year period.

Department Responsibility for Application Review Review of the application process showed the majority of boards ensure process timeframes are reduced as much as possible. However, we identified some circumstances in which an application can be delayed by boards requiring a separate review of applications by board members prior to license issuance. When separate board review is required, the applicant can expect to wait longer for a decision. Separate review requirements could impose a delay of up to six weeks and could have a detrimental impact on licensees' employment opportunities or business productivity. To ensure applicants receive efficient and timely services, statutory authority for initial review of applications should be delegated to the department.

License Renewal All licensees are required to periodically renew their licenses to ensure skills are regularly updated or assessed through continuing education requirements. The department processes 50,000 – 60,000 renewal applications annually. In 2002, the department began offering licensees the option of renewing online. Most licensees can now submit renewal information, pay fees and print their licenses via a website.

Renewal Cycles and Dates are Inefficient The current distribution of renewal dates does not ensure the renewals process is administered as efficiently as possible. For fiscal year 2003, 45 percent of total renewals took place in either November or December. The increased workload can result in the department contracting for temporary staff services. If the department could reduce the large spikes in renewal numbers, it should not be necessary to hire temporary staff.

Online Renewal is Restricted for Some Licensees Despite success in implementing online renewal, approximately 11,400 licensees are currently unable to access the service due to boards requiring renewal applicants to submit documentary evidence of completion of continuing education hours, or use of continual renewal cycles.

Department Should Pursue Standardization of Renewal Procedures Adherence to tradition may be limiting consideration of new approaches reflecting administrative efficiency and technological developments in renewal procedures. Because the majority

of boards have delegated the department authority over renewals, we believe existing administrative procedures should be extended to cover all boards where appropriate. The department should pursue revision of statute where this is necessary to achieve standardization in board renewal procedures.

Disciplinary Activities HJR 20 requested we review board disciplinary actions to ensure they “protect the public and are rational, impartial, and in compliance with state law and regulations”. Again, HJR 20 emphasizes public protection as a primary concern and also highlights the potential for bias in the disciplinary process. Boards can impose a variety of sanctions ranging from letter of reprimand to license revocation. The department is responsible for enforcement of board sanctions. The department records the total number of new complaints received for each fiscal year. For the last four fiscal years, the department received an average of 1,150 complaints annually.

Complaints Process Timeframes are Acceptable Complaints should be dealt with as quickly as possible to ensure corrective action is taken against problem licensees and further harm is avoided. Results from file review showed the average time from receipt of complaint to initial hearing at screening panel was approximately 60 days. Average time from receipt of complaint to closure was around 120 days. When all process steps are considered, the average timeframes observed are within an acceptable range.

Complaints Outcomes are Justified Boards dismiss the majority of complaints without further action. For unprofessional conduct cases, board sanctions are imposed where a finding of reasonable cause is upheld by an adjudication panel. A small proportion of complaints are dismissed due to a lack of jurisdiction. We did not identify any examples of screening panels dismissing complaints when corrective action appeared to be justified by available information.

Promoting Uniformity in Disciplinary Activities We did not identify problems with impartiality in the complaints process. We did identify inconsistencies in board activities and in department administrative procedures. Our review identified areas where increased standardization in disciplinary policies and procedures could be achieved.

- ▶ Consistency in board disciplinary policies – lack of interaction between boards has prevented dissemination and adoption of best practices. Boards could also benefit from exploring disciplinary options used in other state government licensing or law enforcement functions. Promoting standardized procedures could also allow the department to realize administrative efficiencies.
- ▶ Uniform administrative rules for professional assistance programs – four boards operate professional assistance programs, which allow licensees with drug or alcohol dependency or other problems to seek treatment. Review showed professional assistance programs for some boards operate without any formal guidance through administrative rules. To comply with statute, boards must formally establish rules governing assistance program administration.
- ▶ Department compliance inspection procedures – the department should take advantage of recent reorganization efforts to pursue further standardization of compliance inspection procedures. By standardizing procedures, the department should be able to provide more effective oversight of inspection programs and deliver better services to licensees and boards.

- ▶ Department investigation procedures – the department is responsible for investigating complaints of professional misconduct by licensees. Review of complaint investigation procedures showed the department does not use evaluation tools allowing for assessment of investigations on a project-specific basis. Establishing budgeted hours for component investigation tasks should allow the department to gather data for use in managing investigation resource allocation, and establishing performance evaluation parameters for staff.